

Logics of Change:
Exploring Alternatives to Punishment in Sentencing Reform

MPP Professional Paper

In Partial Fulfillment of the Master of Public Policy Degree Requirements
The Hubert H. Humphrey School of Public Affairs
The University of Minnesota

Owen Hawkins

May 5, 2015

*Signature below of Paper Supervisor certifies successful completion of oral presentation **and** completion of final written version:*

Joe Soss, Professor, Paper Supervisor
Hubert H. Humphrey School of Public Affairs
University of Minnesota

Date, oral presentation

Date, paper completion

Richard Frase, Professor, Second Committee Member
University of Minnesota Law School

Date

CONTENTS

Abstract.....	2
Introduction: A Brief Comparison of Norway and the United States.....	3
The Problem of Incarceration.....	5
Matching Disciplinary Responses with Offenders.....	7
Costs of Incarceration.....	12
Racial Disparities in Incarceration.....	14
 Review of the Literature: Sentencing Policy and Incarceration.....	16
Discourses of Punishment.....	22
Institutional Landscapes.....	28
Public Officials and Alternatives.....	31
 The Potential of Alternatives.....	33
Admissions and Net-Widening.....	37
Racial Disparities in Sentencing.....	39
 Conclusion – Implications for Policy.....	43
 Appendix.....	47
Resources.....	51

Logics of Change: Exploring the Institutional and Discursive Contexts of Alternative Sentencing Reform

L'effet c'est moi [I am the effect]: what happens here is what happens in every well-constructed and happy commonwealth; namely, the governing class identifies itself with the successes of the commonwealth. In all willing it is absolutely a question of commanding and obeying, on the basis, as already said, of a social structure composed of many 'souls' [read: "subjectivities"]. Hence a philosopher should claim the right to include willing as such within the sphere of morals—morals being understood as the doctrine of the relations of supremacy under which the phenomenon of 'life' comes to be.^[1]

—Friedrich Nietzsche, *Beyond Good and Evil*, Section 19

Abstract

This paper describes the institutional and discursive landscape related to the incorporation of rehabilitative alternatives to incarceration within United States sentencing policy. Is inducing a “change of heart” in offenders so that they no longer impose a danger to society better accomplished through incarceration for all offenders, or by using alternative methods that use rehabilitative, treatment-based services? Historically, rehabilitative approaches to criminal justice have frequently been opposed in public discourse because constituencies and elected officials have not considered them punitive enough. As a society, we are emerging from a culture in which politicians have been hesitant to invest in approaches that have the potential to reduce costs associated with the prison system of the United States through less punitive means, including treatment and mental health services. The extent that this trend will continue is unknown, although bipartisan political support and calls for alternatives to incarceration appear to have gained popularity in recent years. I argue that the social construction of offenders – the assumption that they possess a particular type of identity – is central to the historical perspectives that likely played a part in generating mass incarceration, and that these ideas have had a tremendous influence upon sentencing policy and our criminal justice system. Mass incarceration has placed an unequal burden upon low-income African American communities and other minorities, and alternatives are disproportionately underused when sentencing these groups. While evidence has demonstrated, particularly among juveniles, that alternatives can reduce costs of criminal justice, the extent to which alternatives possess the capacity to reduce racial disparity is uncertain. Academic attempts to evaluate the empirical relationship between sentencing and incarceration demonstrate that much disagreement exists regarding the actual relationship between sentencing policy and incarceration, as well as the extent to which sentencing reform has the capacity to address inequities produced by mass incarceration. The paper concludes with reflections on how the relationship between the structure of our democratic system and the achievement of the public good may be affected by institutional actors, the role of academic expertise in our democracy, and how solutions to what may appear to be a straight-forward cost-related public problem are fraught with difficulties arising from public opinion.

Introduction: A Brief Comparison of Norway and the United States

In Norway, a revolutionary vision of criminal justice has surfaced in the form of its Halden prison, a maximum-security facility that operates according to the underlying intention of rehabilitating its inmates and reintegrating them back into society. This concept contrasts sharply with our primary intention of punishing them in order to deter future criminal behavior. A comparison between attitudes towards offenders in Norway and the United States suggests that public culture and institutional perspectives shape corresponding disciplinary responses, particularly the financing of correctional programming. According to Jessica Benco in her 2015 New York Times Magazine article, “The treatment of inmates at Halden is wholly focused on helping to prepare them for a life after they get out ... It works with other government agencies to secure a home, a job and access to a supportive social network for each inmate before release” (pgs. 2-3).^[2] Benco suggests that the socialist cultural climate of Norway provides a political arena that is favorable to funding the treatment and rehabilitation of prisoners. Even though “spending on the Halden prison runs to more than \$93,000 per inmate per year, compared with just \$31,000 for prisoners in the United States ... if the United States incarcerated its citizens at the same low rate as the Norwegians do (75 per 100,000 residents, versus roughly 700), it could spend that much per inmate and still save more than \$45 billion a year” (pg. 3).^[2] Differences between Norway and United States criminal justice policies are shaped by assumptions about what punishment is supposed to accomplish, as well as socially-constructed conceptions of the identity and position of offenders within class and racial hierarchies.

Race-based segregation and class strife may not exist in the same way in Norway

as in the United States, where these elements have worked alongside the criminal justice system to constrict the financial and physical mobility of offenders, perpetuating their social dislocation and the oppression of historically under-privileged populations while operating under the pretense of maintaining social order.

Political discourses, as mediated by public opinion, have justified punitive disciplinary policies in the United States by relying upon narratives that gloss over how government policies themselves have contributed to the disruption of African American and minority communities. The broken-window discourses of the 1970s constructed “offender” as a new categorical identity, dislocated from sociological and historical contexts that explained certain criminal behavior, and justified particularly punitive policy responses.

According to The Sentencing Project, an activist organization with the goal of promoting lower incarceration through reliance upon alternatives to imprisonment, “The United States is the world’s leader in incarceration with 2.2 million people currently in the nation’s prisons or jails – a 500% increase over the past thirty years.”^[3] The exceptional rate of prison growth since approximately 1980 is one among a variety of factors that has made incarceration in the United States a unique experience (See **Figure 1** in Appendix).

Additional issues raised by United States incarceration practices as experienced by inmates include sexual abuse and solitary confinement. The United States prison system has been described as a haven for gangs and organized crime that extends beyond its walls, amounting to a school for younger offenders on “getting away with crime” that causes them to be entrenched within criminal networks, and part of a public school-to-

prison pipeline that exacerbates the stability of low-income communities. New data from the Department of Justice led David Kaiser and Lovisa Stannow to observe, “new studies confirm previous findings that most of those who commit sexual abuse in detention are corrections staff, not inmates. That is true in all types of detention facilities, but especially in juvenile facilities” (pg. 3).^[4] Cruel disciplinary practices, such as long-term solitary confinement, may be used at the discretion of these very same staff, creating hierarchical power relationships that govern prison life through the constant threat of sanction.

Furthermore, some states have turned to private services to monitor offenders, yet their profit-driven incentive structures tend to generate inhuman living conditions for prisoners. This is because the profit-maximizing firm is paid per-capita, incentivizing it to take on more offenders than it has the capacity to handle, and to cut costs by spending fewer resources on their care and support. Offenders become victims themselves within our criminal justice system, and may be preyed upon financially, sexually, and emotionally by both other offenders and the supervising officials who are in closest contact with them. In short, our prison system is traumatizing for many who experience it, and it is likely that this experience leaves many offenders in worse condition than they were before entering, making reintegration into society even more out of reach.

The Problem of Incarceration

This paper examines “sentencing” as a judicial decision-making process in which convicted offenders are matched to a disciplinary response. In the United States, the criminal justice system’s default has generally been to rely upon incarceration or

probation, with far less emphasis upon rehabilitation or treatment of the offender with the purpose of fostering their reintegration into society. “Alternatives” to this default criminal justice approach refer to the incorporation of less punitive rehabilitative strategies that emphasize treating offenders like human beings, with respect, and with the underlying intention of helping them reintegrate with society. This approach appears to be sound even from a cost-perspective. Ironically, punitive strategies tend not to meet the real needs of offenders, or even recognize that the rest of society has a stake in these needs being met in the first place. A basic question of this paper is whether we will more likely to attain the criteria that characterize an ideal criminal justice system through the use of non-punitive rehabilitative approaches, compared with the fundamentally punishment-based tactics that commonly characterize our criminal justice system to date.

Sentencing policy has the potential to incorporate additional strategies for handling offenders beyond incarceration. These strategies should emphasize the following often-interrelated criteria:

1. **Public Safety** – Public safety is the protection of the public from harm caused by criminals. The level of safety enjoyed by the public is affected by whether disciplinary responses deter or contribute to the likelihood of crime recurring;
2. **Low Recidivism** - Recidivism is the rate at which offenders return to prison once they have already been there. Recidivism is affected by whether offenders commit a crime and are apprehended once they have already left prison, and whether their experience in prison makes it more likely that they will commit crime once they leave. Incarcerating the same offenders over and over is costly;
3. **Successful Reentry** – This factor applies to the degree to which offenders are able to reintegrate with society once they have left prison without reoffending, and therefore exists as the opposite of recidivism. Defining what effective reentry looks like may depend upon what normative judgments we take in defining what successful life in society looks like. For example, we should be sensitive to our own projections of neoliberal ideals that may suggest that we should solely focus on helping offenders get an education and training to find a job. While these approaches to help the economic mobility of offenders may hold much promise, by only taking this approach

into consideration, we could inadvertently fail to address certain offenders' mental health concerns that limit their ability to successfully complete educational or training programs in the first place;

4. **Cost-Benefit Efficiency** – Cost-benefit efficiency is measured by the ratio of benefits over the costs of our disciplinary responses. Is this ratio positive or negative? Can we measure and monetize all the associated costs and benefits? This paper does not examine all the nuances of this analytical tool, but suggests that cost-benefit efficiency may be useful as a frame to compare incarceration with alternative disciplinary responses;
5. **Cost-Efficiency** – If a cost-benefit ratio is positive, is the gap between benefits and costs great or small? For example, consider a disciplinary response that costs one million dollars to implement, and is projected to generate benefits that constitute one million and one dollars. Technically, we might say that it is cost-benefit efficient, but claim that it not cost-efficient because we are not getting substantially higher outputs compared to our inputs; and
6. **Reduce/Eliminate Racial and Class Disparity** – The full dimensions of damage to society due to the criminal justice system's disproportionate effect upon minority communities of color may not be ascertainable through cost analysis. A claim may be made that even the richest members of society have an interest in supporting the wellbeing of its lowest classes, the most marginalized and socially dislocated groups. The arguments that the lower class drains the resources from society ("trickle-down" economics) and that they are inherently unable to be rehabilitated from their "chosen" trajectories of social disorder has underpinned the conceptual and discursive frameworks that have shaped the punitive turn of our criminal justice system around the 1980s. In the future, politicians may instead support discourses that suggest that all society will have a stronger economic foundation if the lower classes are nurtured and have better opportunities to attain financial stability, (a "trickle-up" approach?). Whether the financial stability of the rich is dependent upon the degradation of poor communities through disciplinary tactics in capitalist society is a subject beyond the scope of this paper, but is nonetheless a fascinating subject for debate. Attitudes towards what should be done with offenders provide an important locus for the study of race and class relations.

Matching Disciplinary Responses with Offenders

The sentencing phase of decision-making may be the right time to make assessments of the specific circumstances that may make an offender more likely to commit crimes against society, such as mental health, poverty, substance dependency, or anger management issues, for example. This evaluative function of the sentencing process

depends upon the court's ability to assess the psycho-social state of the offender. In this way, the criminal justice system attempts to produce social order through disciplinary mechanisms that are fundamentally supervisory, and may dispense judgments through a process that is contingent upon its ability to recognize, categorize, and assess the identity of offenders and their chances of rehabilitation. Given that such procedures are underdeveloped, as has been the case in the United States historically, popular discourses that stigmatize offenders have primarily shaped the decision-making process governing how offenders are matched with disciplinary responses. This has limited the funding and exploration of alternatives as potential options to address this public policy problem. Ideally, the costs necessary to assess and match tailored programming to particular offenders would be offset by long term cost savings associated with their successful treatment and reintegration with society.

We can critique the framing of the problem of default incarceration and the use of alternatives to incarceration solely from a cost lens by asking whether we can fully appreciate the magnitude of the prison system's role in helping structure a society-wide institutionalized system of racial and class hierarchy. In most cases, the costs of incarceration probably outweigh the costs of alternatives to incarceration, although how we assess this problem may change depending upon the type of offender. Different categories of offenses produce different types and levels of burdens upon society, and each may require its own set of investments in programming so that individual offenders are matched to the right disciplinary procedure to the extent possible. Effort should be taken to identify what type of treatment or programming may be useful to address the needs of offenders.

John Pfaff, law professor at Fordham Law School and skeptic of the role of sentencing policy's ability to affect incarceration rates as discussed above, suggested in an interview that, in terms of handling violent offenders, the prison system may be doing its job to a certain extent. He said, "the real growth in the prison population comes from county-level district attorneys sending violent people to prison. And there's a lot to be said for nonprison approaches to a lot of people who are in prison for violent crimes. But that's a political issue that we haven't even begun to address, in part because it's politically scary."^[4] Regarding populations of highly violent youth offenders, Caldwell (2006) observed, "this research has produced consistent findings, that treatment services are cost-effective for this difficult population. Not every treatment approach will be effective or produce cost-benefits" (pgs. 164-165).^[5] This conclusion makes sense regarding offenders who are prone to committing violent crimes, which impose higher costs to society than other types of offenses. We have incentives to keep these individuals out of society and to treat them if possible, simply because of their capacity to generate high costs. This very quality of violence-prone offenders, however, may render treatment less effective, so that incarceration actually is the most efficient response. If this is the case, then the fact that around half of our prisoners committed violent crimes, as shown by **Figure 1** in the Appendix, suggests that the prison system may be serving a rational and justifiable function at least with regard to this group. Both the imposition of incarceration as well as use of treatment alternatives have the potential to reduce greater costs to society generated by the violent offender. E. S. Scott and L. Steinberg (2008) reflect:

Economists explain that some amount of incarceration yields substantial benefits in terms of reducing crime, but that the benefits decrease (that is, fewer crimes are avoided) for each unit of increased incarceration. Thus, incarceration may be justified on social welfare grounds for youths who are at

high risks of re-offending. But no social benefit is gained, in terms of crime reduction, when youths are confined who would not otherwise be on the streets committing crimes ... Almost all young offenders will be released at some point to rejoin society. Thus the impact of incarceration on re-offending and impact on their future lives must be considered in calculating its costs and benefits. The research on the impact of adult incarceration on normative adolescent offenders is not yet extensive, but the available evidence suggests that imprisonment undermines social maturation and educational progress and likely contributes to recidivism ... If a youth's experience in the correctional system disrupts educational and social development severely, it may irreversibly undermine prospects for gainful employment, successful family formation, and engaged citizenship—and directly or indirectly contribute to re-offending (pgs. 26-27).^[6]

Some incarceration may be necessary, particularly for those offenders who are most likely to reoffend and those who tend to commit more costly crimes such as violent and sexual-assault. The widespread costs of applying incarceration as a default sentence across the board, however, may limit the effectiveness of our criminal justice system overall.

The inverse of these observations about violent offenders is also telling, implying that non-violent offenders, making up the other half or so of the incarcerated population, commit crimes that are generally less costly to society compared to violent offenders. Offenders who have committed property, drug-related, and public-order crimes may be possible to treat with selective programming responses and generally impose substantially lower costs upon society than those who have committed violent or sexual offenses. Advocates of alternatives suggest that we should not treat all types of offenders in the same manner that we treat the most violent ones. An examination of the distribution of types of offences within the prison system suggests that we should assess what types of disciplinary practices produce favorable results, and whether the specific needs of offenders can be matched with tailored disciplinary actions. For example, treating both purchasers and sellers of drugs with the same drug intervention may not adequately address their disparate needs – one characterized by chemical dependency, the other shaped by economic incentives. Differences in risk factors may exist as well as

disparate potential for a particular alternative to provide benefits for those who commit crimes based out of economic necessity compared to crimes based out of maliciousness or psychoses.

In constructing frameworks that govern how sentencing is applied, it may be useful to construct guidelines that identify the offender's needs as well as risk assessment tools to identify the likelihood of reoffending, mechanisms that can assess whether their motivations to commit crime were based upon economic desperation or the intent to harm others, for example. These observations illustrate the importance of tailoring sentences to individual offenders as a necessary means of avoiding social costs associated with mishandling the treatment of offenders, which can cause unanticipated consequences.

Understanding offenders from a lens that acknowledges that their problems are likely to be exacerbated by poverty and the absence of opportunities to advance in what we define as legitimate civil society may help undo the connection between our punitive attitudes toward offenders and the path dependency of our institutional systems that favor punishment-based responses over health-oriented, individually-tailored programming. Simon (2014) reflects upon how the path dependency of our criminal justice system upon incarceration is fueled by rigid, generic notions of the identity of offenders, what they are capable of achieving, and that this construction limits the capacity for politicians to advocate for alternatives because of the public belief that they should be punished:

Although few continue to defend expanding imprisonment as a tool to reduce crime, and many propose alternatives to incarceration for some categories of felonies (the nonviolent, nonserious, nonsexual), substantial shrinkage of the prison population is resisted by politicians who are turning the rhetoric of evidence-based penology into a rationale for going slow. Instead of offering significant plans to restructure policing and criminal sentencing, and exercising administrative and legislative measures to bring relief to the currently imprisoned and those burdened by past incarceration, these politicians would stabilize and even grow the prison population. The claim that only prison population reductions achieved through "evidence-based" prison rehabilitation or reentry programs designed to reduce recidivism are compatible with public safety is misleading and risks fostering the kind of correctional system that will continue to violate human dignity. It is misleading because mass incarceration-style

sentencing systems in most states and the federal criminal system were not intended to reflect the future dangerousness of offenders; indeed, many of them forbid consideration of individualizing details in favor of a harsh, but indiscriminate, mix of retributive crime-based punishment and group-based general incapacitation (pg. 274).^[7]

Note that public discourse regarding offenders, in its inability to consider the humanness of the individual offender, whose unique circumstances may warrant a specifically tailored disciplinary response, parallels the all-encompassing default use of incarceration. A generic conceptualization of a public problem - offenders in this case – justifies an unwieldy, heavy-handed policy response that misunderstands subtleties of the situation it is trying to solve, a flaw that generates additional problems for groups targeted by carceral policy.

Public officials such as judges and probation officers will always be confronted with the difficulty of assessing which offenders should be locked up as opposed to which ones we can afford to let move freely in public. In addition, the question exists as to which sanction to use if offenders are not sentenced to prison. Although appearing as counter-intuitive to those advocating punitive responses, in an ideal world, sentencing policies require individualized approaches to analyzing the causal relationships between offenders' personal histories, their experience of structural inequality, the incentive structures that pressure them to commit criminal behavior, and a more complete assessment of an individuals' risks of reoffending.

Costs of Incarceration

Incarceration is high-cost, ineffective in preventing crime, and produces class and racial disparities. Monetary costs are incurred by society both due to the external effects of criminals who continue to carry out crimes, and also due to the necessary funding of

criminal justice system programming that is mandated through court sentences, prison-based or otherwise. The cost structure of the criminal justice system is additionally affected by the rate at which offenders recidivate, or return to prison after they have already been there. It is a major indictment of the effectiveness of our criminal justice system that recidivism rates in the United States are as high as they are. According to the United States Bureau of Justice Statistics, “At least 95% of all state prisoners will be released from prison at some point; nearly 80% will be released to parole supervision.”^[8] Robertson et al. (2001) assert, “the majority of total costs caused by delinquency and crime are the indirect external costs imposed on society that occur over the life of an offender. An effective treatment that rehabilitates a juvenile offender eliminates these costs from the social ledger” (pg. 281).^[9] Some offenders rely upon criminal behavior to make a living or supplemental income and do not have access to sufficient treatment for mental health problems or drug addiction. Consider the following observations regarding the interaction of poverty and the criminal justice system:

- In 1991, more than half of all state prisoners reported an annual income of less than \$10,000 prior to their arrest.
- While roughly 80% of all U.S. men of working age are employed full-time, only 55% of state prison inmates were working full-time at the time of their arrest.
- Only 33% of prisoners nationwide have completed high school, while in the general population 85% of all men 20 to 29 years old have a high school diploma.
- The United States spent \$167 billion dollars on policing, corrections, judicial and legal services in 2001 and only \$29.7 Billion on Temporary Aid to Needy Families (TANF)^[10]

Placing low-income offenders in prison does not change the underlying incentive structures that pressure the urban poor to participate in criminal activity, or ameliorate the internal psychoses and addictive behavior that may lead some individuals to perpetrate criminal activity out of desperation. These points suggest that we have strong economic and moral incentives to facilitate reentry into society, and to reduce the trauma and social disorder produced and contained within our prison system, particularly because what is

experienced and learned in prison eventually transfers back to society at large. We may arrive at this conclusion either through an analysis of the cost implications of mass incarceration, or by observing the racial disparity and exacerbated poverty that incarceration generates.

Racial Disparities in Incarceration

Monetary costs are not the only reason that we should consider restructuring our disciplinary regime. A critical lens that sees racism as the underlying feature of our criminal justice system might suggest that we have accepted its rampantly inefficient cost structure because as a society, we value and are at least implicitly willing to pay for the disparate incarceration of minorities, particularly African American males, and the widespread disruption of their opportunities to earn a future legal livelihood.

Incarceration has become particularly linked with the experience of being young, black, and poor in America, given that one out of three black males born in 2001 can expect to be incarcerated in their lifetime (pg. 11).^[11] Incarceration has distributed a burden of unequal costs upon minorities, and in particular, upon young African American males. Our criminal justice system punishes minorities of color disproportionately more than it does whites. The extent to which cost analysis can ascertain the full effects of incarceration in contributing to the disruption of communities of color, discrimination, social isolation, and stigmatization is doubtful, yet it should be noted that both frames show that incarceration is a negative and disruptive force.

Although the criminal justice system predominantly targets male minorities, women of color also demonstrate greater likelihood of being incarcerated at 1 out of 18 in

2001 compared to their white counterparts (1 out of 111 in 2001) (pg. 11).^[11] Alfred and Chlup's research has similarly shown that "Black women are actually eight times more likely to be incarcerated than White women" (pg. 241), that in general, women of color's "property offence[s] are often economically driven, motivated by poverty and the abuse of alcohol and drugs" (pg. 242), and that "[Women offenders] are survivors of physical and sexual abuse, have substance abuse problems, possess multiple physical and mental health problems, and are convicted primarily of drug-related charges" (pg. 242).^[12] These observations regarding low-income minority women offenders suggest that they are likely to be particularly in need of treatment of a variety of types that recognizes them as an at-risk and marginalized population. Simply addressing these problems with a catchall policy of incarceration does not address the underlying problems that these women face. Such a perspective highlights the socioeconomic contexts of criminal behavior that may be obscured from media portrayals of minority offenders, which may be instrumental in constructing public opinion.

Low-income minorities do not commit crimes because they are "black," as some oppressive public discourses have maintained, but because the socioeconomic history of power relations in the United States embodied within colonialism and slavery has continually infringed upon their freedom and equal status, and continues to disadvantage minorities by consistently destabilizing their ability to achieve vertical mobility. Crime rates, are higher among low-income communities of color because of disproportionate policing, as well as the problem that members of these communities may be incentivized to use crime as a desperate means to generate a secondary income that mainstream

society will not provide due to discrimination and a lack of opportunities to attain financial security.

Review of the Literature: Sentencing Policy and Incarceration

Academics have explored how sentencing practices have been instrumental in generating rising rates of incarceration in the United States. While some contest this relationship, others suggest that changing our sentencing practices could ameliorate this issue. These researchers relied upon both qualitative and quantitative analyses to examine the relationship between sentencing and incarceration.

Negative public opinion regarding offenders has historically lowered the public's willingness to invest in their rehabilitation, and subsequently, the ability of elected officials to propose similar remedies. The ways that discourses operate in the political arena and shape public opinion constitute a primary barrier to the passage of policy that favors rehabilitative treatment of offenders. Mauer (2001), Executive Director of The Sentencing Project, connects political discourses of the 1970s to the shift of the criminal justice system toward determinant and more structured sentencing practices and away from rehabilitative strategies that had characterized the previous era.^[13] Mauer discusses a disconnection between crime rates and incarceration rates, suggesting that imprisonment yields diminishing and inefficient cost outcomes as a policy mechanism intended to deter deviant behavior. Mauer then charts the 'get-tough-on-crime' movement and other ways that public opinion, political discourses, and the media have affected trends in criminal sentencing. Finally, Mauer suggests that policy reform should focus on how to achieve results effectively, resist a singularly punitive attitude towards

sentencing, and that the criminal justice system's treatment of inmates is directly connected to the well being of low-income neighborhoods and communities.

Zimring (2001) describes a trend in the last quarter of the 20th Century toward increased severity of attitudes in the United States criminal justice system regarding punishment.^[14] This change in perspective encouraged the development of mandatory sentencing requirements that produced higher incarceration rates. Zimring contends that policies that are still in place that arose from that period will be a primary obstacle to attempts to reform the prison system. The article outlines several aspects of the new political agenda regarding punishment, including the observation that disconnections exist between rhetoric in public discourse and how the actual implementation of highly punitive incarceration policies unfolds. The cultural shift toward punitive severity was facilitated within public and political arenas that used the symbolic dimensions of punitive rhetoric to justify harsher treatment of offenders. Zimring closes by stating that it will be difficult to reverse this trend because of the entrenched nature of these policies and the institutional structures in place that carry them out.

Zhang et al. (2009) present an analysis of incarceration rates contextualized within a description of the transition of the criminal justice system from indeterminate to determinate sentencing.^[15] In the former, the discretion of individual judges is preserved regarding sentences of punishment. In a determinate system, the relationship between punishment and offence is much more structured, and is subject to mandatory requirements that may tend to ignore the particular circumstances of individual crimes or criminals. Zhang et al. describe how two basic forces that are both shaped by sentencing practices drive prison growth. These include increases in admissions and increases in

sentence length. The article then describes how the authors used longitudinal data to examine the relationship between higher incarceration rates and changes in state-level sentencing policy, yet were unable to demonstrate a relationship between the two factors.

Sorensen and Stemen (2002) maintain that the primary policies arising from “get-tough-on-crime” discourses, including determinant sentencing, mandatory minimum sentencing, and truth-in-sentencing policy do not appear to influence incarceration or admission rates.^[16] These authors suggest that the percentage of blacks in an area, the crime rate, and a more conservative ideology of the citizenry are primary factors that affect the incarceration rate. This last point about ideology appears to confirm the importance of public and political discourse in shaping policy related to incarceration rates, yet according to the position of these authors, public ideology acts through some other means than sentencing practices in affecting incarceration rates. Only presumptive sentencing guidelines appear to show a consistent relationship with incarceration rates. States that employ them have much lower rates of incarceration (pg. 469).^[16] Sorensen and Stemen conclude by suggesting that researchers should hesitate to assume that sentencing provides a quick and easy way to reverse the incarceration boom.

The work of John Pfaff has demonstrated that the punitive turn of the United States criminal justice system may not have been expressed in the form of increased sentence lengths, but instead, is likely to have contributed to higher incarceration rates by increasing the types of individuals who could be charged with crimes, and the likelihood that they would receive a prison sentence as a result. Pfaff (2011) suggests that the causes of incarceration are not well understood by researchers. He maintains that sentence length, which has not changed much in recent years, does not drive incarceration rates,

but it is instead our “willingness to incarcerate,” and increases in the incarceration of minor offenders that are implicated in driving prison growth.^[17] Pfaff notes that violent offenders tend to have longer sentences than nonviolent offenders, and minor crimes are accompanied by shorter sentences. Overall, Pfaff recommends asking “for whom?” is sentencing policy that favors incarceration a main problem. He states that black youth appear to disproportionately bear the brunt of longer prison sentences. Pfaff concludes by suggesting that the key force driving prison growth has been generated by the last option among the following possible causes: “(1) locking up those who otherwise would have gone to prison for much longer terms, (2) locking up those who otherwise would not have gone to prison for long terms, (3) locking up those who otherwise would not have gone to prison for short terms, or some combination of these three” (pg. 29).^[17] Pfaff’s observations suggest that if the political climate influenced incarceration rates, it did so in response to “get-tough-on-crime” rhetoric primarily by widening the ability of the criminal justice system to impose new prison sentences, as opposed to lengthening sentences.

Pfaff (2012) reiterates many conclusions mentioned in his 2011 paper, in particular, that changes in admissions are more likely to drive prison populations, as opposed to changes in sentencing length.^[18] He draws upon longitudinal data of a variety of offense types to make this claim, and attempts to unpack the micro and macro-level causes of prison growth. Pfaff is interested in confronting a public conception that the punitive turn of our criminal justice system has translated into longer sentence lengths. He also suggests that there may be a connection between increases in funding of the criminal justice system and rising incarceration rates, calling for “a richer understanding

of the particular political environments in which [county officials] operate” (pg. 1265).^[18] Pfaff concludes by suggesting that felony filings per arrest soared during the 1990s and 2000s, and that this has been due mainly to the activity of local-level prosecutors (pg. 1262).^[18] He concludes by cautioning that changing political climates and public attitudes may add confusion to this already inconclusive field.

Raphael (2009) draws upon prior research to suggest that in tandem with harsher sentencing policies that boosted incarceration rates, state revenue needs to be available to fund facilities for the additional inmates, and that this is an important starting point for future analysis.^[19] He also suggests that although his own work and that of others has been trying to validate the relationship between sentencing and incarceration empirically, they have been generally unsuccessful. Nonetheless, in contrast to Pfaff, he is still confident that a relationship exists: “Although I am convinced that changes in sentencing severity explain most of what happened, the phenomenal increases in incarceration that we have observed could not have occurred in the absence of available resources” (pg. 94).^[19] Raphael also writes, “Despite my strong modeling orientation, here I believe we may have reached our limit and that we have much to learn from qualitative and historical research on sentencing policy” (pg. 93).^[19] These observations suggest that it may be unwise to downplay the role of sentencing policy entirely, even though this field of research currently appears to provide a shortage of quantitative evidence that demonstrates the relationship.

Bushway (2011) confirms a central observation stemming from this review of the literature, which is that much disagreement exists regarding the policy causes of mass incarceration.^[20] He remarks on Raphael’s (2009) comments discussed above regarding

our inability to generate much empirical verification of the impact of sentencing practices on incarceration rates: “This admission is not casual but a realistic concession by a top-rate empiricist after what amounts to years of efforts” (pg. 328).^[20] Bushway later argues that sentencing policies should be focused on lowering crime rates, and that potential exists for alternatives to incarceration to be considered at sentencing, such as heightened community supervision.

As represented in this review of the literature, academics have presented conflicting views of the role of sentencing in producing incarceration, yet have indicated that how we identify this relationship may depend upon what we are measuring. For example, if only sentence length is analyzed, a researcher may not be aware of the more powerful relationship of how incarceration rates can be affected by a wider range of admissions, and appear at times to be suggesting that all aspects of sentencing are completely unrelated to incarceration. In response to this claim, however, policy makers should note that the sentencing process necessarily plays a part in determining many aspects of how incarceration is used as a default mechanism to handle offenders, and a version of it always unfolds before someone goes to prison in the United States, suggesting that it may be an important time to consider alternative sanctions for offenders.

Most of the disagreement among academics centers on the extent of the role of sentencing policy as a causal factor in generating mass incarceration, and may be dependent upon the scope of analysis the researcher has adopted. These observations are important to consider because the uncertainty within this field of academic literature complicates our attempts to use it in an advisory manner to construct best policy practices

that are intended to target the root causes of mass incarceration. Policy makers should be aware of this problem because they should seek to avoid causing costly unintended consequences or additional disparities through chosen policy reforms.

Discourses of Punishment

Our current popular discourses regarding punishment are implicated in justifying lower investment in the treatment of offenders. The cost structure of our criminal justice system appears to be connected to a default overreliance upon incarceration as the primary form of punishment and discipline, and we must look at the political discourses and prevalent discourses within institutions in order to evaluate the sociological and cultural assumptions that underlie this practice. Discourse shapes the way we address law and policy by shaping the way we allocate public funding in ways that are perceived to be legitimate, unquestioned, and normatively correct. Given the massive costs inherent to our judicial system, we should question the assumptions and justifications that are given in political circles that affect policy implementation. For example, Hamilton (2014) reviews the Federal Sentencing Commission's punitive, prison-as-default attitude that it relied upon when constructing the Federal Sentencing Guidelines (FSGs), suggesting that in practice, they discourage alternatives to imprisonment that should be implemented when sentencing the vast majority of offenders.^[21] Hamilton suggests that this discursive context shaped the passage of the Sentencing Reform Act of 1984, which was instrumental in leading the criminal justice system away from the use of rehabilitative measures toward favoring imprisonment. Hamilton suggests that the Federal Sentencing

Commission should change the FSGs to issue guidance that emphasizes the ways that alternatives can be implemented in the sentencing of the majority of offenders.

In a 2015 New York Times article, Jessica Benco describes an incident that demonstrates the connection between trends toward more punitive criminal justice policies in the United States and the corresponding lower investment in alternatives:

Much of the backlash within penological circles can be traced to Robert Martinson, a sociology researcher at the City University of New York. In a 1974 article for the journal *Public Interest*, he summarized an analysis of data from 1945 to 1967 about the impact of rehabilitation programs on recidivism. Despite the fact that around half the individual programs did show evidence of effectiveness in reducing recidivism, Martinson's article concluded that no category of rehabilitation program (education or psychotherapy, for example) showed consistent results across prison systems ... Martinson's paper was immediately seized upon by the news media and politicians, who latched on to the idea that "nothing works" in regard to prisoner rehabilitation. In 1984, a Senate report calling for more stringent sentencing guidelines cited Martinson's 1974 paper, without acknowledging his later reversal. The tough-on-crime policies that sprouted in Congress and state legislatures soon after included mandatory minimums, longer sentences, three-strikes laws, legislation allowing juveniles to be prosecuted as adults and an increase in prisoners' "maxing out," or being released without passing through reintegration programs or the parole system. Between 1975 and 2005, the rate of incarceration in the United States skyrocketed, from roughly 100 inmates per 100,000 citizens to more than 700 — consistently one of the highest rates in the world (pgs. 13-14).^[2]

Martinson was probably correct in his conclusion that not all categories of rehabilitation programs are able to produce results across the board, let alone consistent results. The United States criminal justice system relies upon a federalist structure that is fragmented by state and made up of different contexts that shape criminal justice policies.

Populations and crime patterns may be unique to local areas, making generalizations of results from case studies somewhat difficult to project. These observations suggest how the assumption that a singular type of criminal justice policy, a "silver-bullet approach," such as incarceration should be applied to all offenders limited our ability to conceive of alternative policy strategies that would be more socially beneficial in the long run. For example, "As youth crime rates rose during the 1980s, conservative politicians ridiculed the juvenile system and pointed to high recidivism rates as evidence that rehabilitation was a failure" (pg. 17).^[6] The effect that Martinson's work had upon politicians and

public discourse demonstrates the direct effect that particular interpretations of evidence produced in the academic realm can have upon the policy trajectories chosen within legislative bodies.

Networks of public stakeholders constrict the potential of sentencing reform to consider alternatives in this way, even when other stakeholders, such as judges, activists, and academics, have called for their increased incorporation into policy regimes based upon a more intensive analysis than what was being taken into consideration within the politician-constituent relationship. In a sweeping rejection of alternatives, Clear and Austin (2009) write,

A panoply of strategies, generally thought of as "alternatives to incarceration," have been offered to entice judges to place offenders into community programs rather than incarceration, including, for example, intensive probation programs and drug treatment diversion programs. However, these programs rarely substantially replace incarceration and drive down incarceration rates. There are two reasons. First, to be politically feasible, most "alternatives" have to promise to be tough and uncompromising. As a result, they end up having high rates of "technical" failures, which occur when program participants are unable to live under the programs' strict rules. Second, these strategies typically promise not to put the public at risk, so they forego dealing with serious law violators and instead deal with law-breakers who would not be sent to prison anyway. In the first case, these tougher "alternatives" increase incarceration by sending people back to prison at higher rates; in the second, they are irrelevant to incarceration rates (pgs. 315-316).^[22]

This critique of the use of alternatives highlights the pervasiveness of punitive disciplinary public attitudes that shape and constrain policy reform, suggesting that such mindsets are likely to favor a punitive approach compared with attempts to invest in and implement rehabilitation and treatment alternatives. Although they present some penetrating insights into political forces that constrain the investment of alternatives to incarceration, Clear and Austin do not address the point that steps may be taken to reduce the net-widening effect of alternatives as discussed by Demlietner (2005) below, as well evidence supporting the use of alternatives to divert individuals from prison, which reduces incarceration.

Media-propelled discourses worked in tandem with the political arena to justify the stigmatization of offenders and their heightened punishment as opposed to rehabilitative strategies. The United States turned toward more punitive approaches in the 1970s and 1980s because popular discourses were perpetuated among politicians and their constituents that defined offenders as a particular type of people who are unworthy of non-punitive disciplinary responses. These ideas played upon public fears and a caricature of the emerging juvenile offender, a new breed of hyper-violent and dangerous individual who posed immediate threats to public safety. Discourses of blame that stigmatize offenders attempt to justify underinvestment in their welfare, possibly within some instances because the majority of offenders are minorities. Such arguments perpetuate essentialist notions of offenders that remove them from their socioeconomic, political, and historic contexts. In asking offenders to change their heart from criminal behavior, society may have to change its heart towards offenders.

By adhering to a “nothing works” attitude toward offenders, the criminal justice system generates socioeconomic power relations that reproduce conceptions of social order at the cost of increasing class disparity. The justice system reproduces racially disparate outcomes in tandem with the political system by shaping stigmatized attitudes toward the poor and towards inmates, and by functioning as a mechanism in some cases that extracts resources from and exacerbates the financial instability of low-income communities. This effect of our prison system, contrary to any intentions of reforming individuals through punishment, is generally counterproductive: “mass incarceration’s hold on vast public resources and the obstacles erected for people with criminal records further erode the economic and social buffers that prevent crime” (pg. 18).^[11] In lieu of

generating a system of punishment that effectively deters criminal activity, our policies of incarceration and criminal justice may contribute to crime rates themselves by removing the capacity of low-income individuals to attain economic mobility, leaving crime as the primary option to supplement an already impoverished financial status.

Fass and Pi (2002) observe, “harsher sentencing can indeed prevent some offenses. The value of this gain, however, is much less than its cost to produce. As a result, by consuming public resources that otherwise might be invested in more productive purposes within or outside the justice system, the policy of toughness visits substantial opportunity costs on communities that embrace it” (original italics omitted) (pg. 363).^[23] Instead of addressing how poverty and a lack of available opportunities for economic advancement may incentivize individuals to rely upon crime, this observation suggests that our criminal justice system exacerbates and contributes to the financial stresses of low-income individuals and communities. Lynch (2014) similarly suggests that strictly punitive attitudes toward sentencing that support an incarceration-only approach are guilty of “ignoring the social pathologies that lead young men to think that violence, theft, or the drug trade are the only available routes to income, social status, and self-respect [and] will leave us with the same depressing crime problem we turned to prisons, ineffectively, to solve. Attempting to treat those pathologies will easily eat up whatever we save in prison budgets.” (pg. 565).^[24] This last statement may be true, although effective evidence-based interventions have been shown to be much less expensive and more effective than incarceration in general.

William Julius Wilson (1990) generated insights that help critique portrayals of offenders that insist that they act without the good of society in mind because of their

entrenchment within a self-perpetuating “culture of poverty.” Wilson suggests that we should explore the term “concentrated poverty,” which emphasizes the negative effects on mobility that structural characteristics of society and policy mechanisms such as incarceration play a role in generating, such as social isolation and a lack of networking exposure to mainstream job opportunities, in opposition to a narrative of the internal motivations, capacity, and mindsets of low-income people (pg. 61).^[25] Alfred and Chlup reflect upon the impact of concentrated poverty and its obscurity in public discourse:

The arguments that claim welfare recipients are lazy or that all criminals should be locked up and have the key thrown away obscure the broader social policies that allow for large numbers of the U.S. population to have low literacy levels, low educational attainment rates, and for certain segments of the population to spend more time cycling in-and-out of prisons than they do our nation’s classrooms (pg. 244).^[12]

Punitive perspectives ignore the decisions and incentive structures that pressure low-income individuals to choose risky criminal activity over living in a cardboard box on the street. Perhaps acting as if the social good is more important than individual needs within these contexts is simply a perspective assumed by the overly privileged, one held by individuals who have never been forced to face the difficult problem of choosing between the attainment of basic economic needs of subsistence and deviant behavior.

The criminal justice system’s inequities and high costs have been slow to dissolve because they are embedded as discourse within institutions and the political arena, continuing largely because lingering narratives shaping public opinion stigmatize offenders. Institutions become path-dependent in turn, perpetuating habitual behavior justified by underlying assumptions. For example, alternatives to prison need to be available locally or the judge doing the sentencing lacks choices and his or her discretion is therefore constrained.

If ideological discourses operate in tandem with the policy mechanisms of the justice system and define offenders as being not worth treating and as incapable of living up to normative standards required to live in a free society, no matter what treatment they receive, such discourses have limited our ability to achieve more robust social benefits. These problems are exacerbated by politics that constrict or eliminate the funding of alternative programs, resulting in masses of untreated offenders who are unsuccessful in their attempts to reenter the community.

Institutional Landscapes

Stakeholders and the institutions they exist within represent frameworks of discursive power. Sentencing policies are generated within a complex web of stakeholders and institutional frameworks. Kingdon's canonical policy treatise on the "garbage can" model of policy change, *Agendas, Alternatives, and Public Policies*, developed a conceptual model that helps us evaluate the contexts in which alternative-based sentencing reform has the potential to be passed. Kingdon's analysis suggests that legislature is more likely to be successful when it can simultaneously meet the interests of a variety of institutionalized stakeholders, including academic researchers, public officials, and the public itself. Kingdon writes, "Proposals that fail to meet these criteria—technical feasibility, value acceptability within the policy community, tolerable cost, anticipated public acquiescence, and a reasonable chance for receptivity among elected decision makers—are not likely to be considered as serious, viable proposals" (pg. 131).^[26] In the Appendix, **Figure 3** depicts the passage of policy as being constrained by the institutional frameworks of these actors. Academics and activists work in the policy field to produce

research and insight into public problems such as incarceration and crime. Politicians and their constituencies produce public discourses that reproduce a particular way of viewing the subject-matter that persuades the public. Institutional actors, such as police, court officials, and corrections staff generate conceptions of how policy operates through their direct work with offenders. All of these actors generate substantial pressures upon the policy decision-making process, particularly in terms of defining what types of policies are identified as legitimate.

Policy reform is dependent upon a variety of factors that mobilize public and institutional support for legislation, and Kingdon's approach suggests that agreement between institutional fields may be necessary. Jeremy Travis (2014) similarly outlines a more recent awareness among both liberal and conservative politicians that mass incarceration is an important area of public policy to consider, and describes the interaction between the political and criminal justice systems of the United States.^[27] He writes,

Reducing mass incarceration requires a political strategy aimed at legislative change. If, as the recent NRC report (2014) concludes, we have high rates of incarceration because of our policy choices, then we will have lower rates of incarceration only if we make different policy choices. Stated more bluntly: Our democracy got us here, our democracy must get us out of here. Yet the exclusive focus on our legislative branches of government overlooks the power of the executive and judicial branches. A successful political strategy will mobilize those governmental voices as well (pg. 573).^[27]

Travis emphasizes that court actors such as judges and prosecutors play an important role in sentencing outcomes, and situates the problem of sentencing and mass incarceration within a varied and complex institutional landscape. Policy makers should consider whether we need to change discourse, including public opinions of offenders, to change policy, and whether policy change is more readily attainable by focusing on how power is leveraged within the political sphere. The latter system is composed by the interaction between public officials, elected officials, and their constituencies, the "public" itself. On

the other hand, the costs of our prison system appear to be driving many bi-partisan calls for reform, not its racial disparity.

Our elected officials, academics, and activists need to look at the data and confer among themselves, and to realistically assess the effectiveness of the status quo as compared with the feasible ways that they might collaborate on a more useful approach to sentencing. Constituents may exert pressures that constrict the ability of elected public officials to fully consider all policy alternatives, such as the potential of non-prison disciplinary measures. The ways that activists, academics, the media, and politicians discursively frame public policy problems, including perceptions of groups generally affected by policy, shapes the reform being produced, how and whether it is considered legitimate, and the particular context in which it is enforced and implemented. We should question the roles these institutional actors take in shaping the policy field.

Activists, academics, and politicians have the potential to propose intelligent changes to the sentencing options currently available. Their interactions, however, may not be very systematic or efficient in terms of how information and resources flow between them. The political field may hold far more power over policy change than even the academic or activist fields (which comprise what Kingdon considers to be the policy field), although the latter may have more information about the problem and more analytic capacity at its disposal. These observations suggest that when assessing a policy reform proposal, it may be helpful to assess the role of discursive power and rhetoric within the political sphere, within public opinion, as contrasted to discourses produced by academics and activists. The primary example that this research has uncovered is that the policy field states many reasons for moving beyond punishment as the primary

characteristic of our criminal justice system, primarily citing its high costs and rampant production of racial disparity, while the political field has historically been unable to get beyond its obsession with making sure offenders experience retribution. The policy field has demonstrated in many ways how this approach is antithetical to the public good. In this way, the criminal justice system is a site of contested assumptions and informational impasses.

Public Officials and Alternatives

Although the political arena has traditionally rejected incorporating alternative sentences in favor of the more punitive disciplinary response of incarceration or probation, public officials have recently demonstrated increasing interest in a wider variety of potential disciplinary responses towards offenders. Public officials, such as judges and attorneys, may desire the option of sentencing offenders with alternatives, but often find that these are unavailable. The results of a 2003 survey of judicial opinion indicated, “most judges oppose restriction to the availability of nonprison alternatives. The survey indicates that almost half of all district court judges demanded greater access to nonprison sentences for offenders to meet the goals of punishment set out in the Sentencing Reform Act” (pg. 345).^[28] This desire reflects an observation that well-developed institutional structures that are capable of providing needed services for particular offenders simply does not exist. Goldstein suggests, “Programs that offer therapy and substance abuse treatment are scarce and widely dispersed, so judges sentence juveniles to where treatment is available on site” (pg. 3).^[29] For example, one judge

acknowledges that the scarcity of mental health services in West Virginia can lead to tougher sentences for juvenile offenders. ‘There is a lack of substance abuse services, a lack of counseling, a lack of ability to have in-home services to maintain kids in the family ... So many times I will remove a child

and place him in a facility, if they're on the verge doing bad things or getting into drugs. When they have structure, they thrive' (pg. 6).^[29]

This judge's words display an assumption that the punitive experience of being locked up is capable of providing a healthy "structure" to young offenders, in which "they thrive," a contention that should be questioned based upon the capacity for incarceration to produce the opposite effects. On the other hand, the above passage suggests that even though this judge has relied upon punitive disciplinary responses, he has done so because he is aware that available alternatives are lacking, suggesting that he would use them if they were available. Punitive political discourses affect our criminal justice system by reducing public investment in alternatives to prison, even after studies have shown that well-built rehabilitative programming is likely to reduce criminal justice costs and recidivism, and many public officials are in favor of the expansion of alternatives as options. Warren (2007) describes a 2006 survey of public officials which illustrates their interest in the availability of alternatives at sentencing:

A sentencing reform project survey of state chief justices and state court administrators found that state judges hearing felony cases frequently complain about the ineffectiveness of current sentencing policies and the resulting high rates of recidivism. The survey found wide support among state court leaders both for reducing recidivism through greater reliance on evidence-based practices and for reducing our current over-reliance on long-term incarceration through utilization of community-based alternatives to incarceration for appropriate offenders. The NCSC national sentencing reform project also recently completed a comprehensive national public opinion survey on public attitudes towards sentencing. The public opinion survey found that the American public is also widely supportive of such reforms. Almost 80 percent of the public believes that given the right conditions, many offenders can turn their lives around and become law-abiding citizens; and 88 percent believe that treatment and counseling programs should be used "often" or "sometimes" as alternatives to prison in sentencing non-violent offenders (pg. 1307).^[30]

This passage suggests that the process of how judges choose to match offenders with disciplinary responses is dependent upon the contexts of policy guidelines, as well as the institutional landscape of available services, and that the increased sentencing of alternatives not simply up to their individual wishes. This has been one of the effects of determinant sentencing laws that have lessened the discretion afforded to judges since the

Sentencing Reform Act of 1984. Although the resulting policies may have reduced some racial disparity, reduced discretion also lowered the ability of judges to sentence offenders according to their individual needs, and to use alternatives as part of this procedure. Framing the sentencing process as a decision-making activity involving various institutional pressures and mechanisms, themselves built upon political discourse and public opinion, allows us to understand that many institutional actors have little choice but to act and think in line with the cultural and policy limitations that the arena of electoral politics has erected.

The Potential of Alternatives

Overall goals of reforming the criminal justice system may have the potential to be accomplished by increased, widespread alternatives to incarceration, particularly if they are evidence-based. Several studies have presented evidence suggesting that alternatives have the potential to reduce incarceration-related costs to society, particularly among juveniles, who pose a greater criminal risk, greater potential to inflict costs upon society compared to older offenders because they will live longer, and may be more responsive to treatment because they are developing biologically and cognitively.

Alternative sanctions to incarceration are capable of reducing crime and recidivism because they address the lack of opportunities for economic advancement and the underlying issues that get in the way of changing the behavior of criminals. They are generally more cost efficient: “a year of juvenile incarceration actually costs five times as much as a year-long rehabilitation program” (pg. 28).^[6] Robertson et al. (2001) found that “local intensive intervention programs based on a cognitive-behavioral treatment

approach can more effectively reduce juvenile justice system expenditures relative to traditional probation and parole procedures and programs that provide only strict monitoring and supervision” (pg. 280).^[9] It is worth noting that this study did not include costs affecting the individual victims of crime, which would substantially increase an account of these costs, only those that caused public funds to be spent. Dana Goldstein states, “In Ohio, low-to-moderate-risk juvenile offenders sentenced to community programs instead of secure facilities were two to five times less likely to reoffend” (pg. 7).^[29] Reductions in reoffending through reliance upon alternatives produce cost savings: “A year in a West Virginia juvenile facility costs more than \$80,000 per child, compared with \$1,000 to \$33,000 per child in community programs that have reduced recidivism by up to 20 percent in other states” (pg. 3).^[29] Additional research should examine the effectiveness of alternative treatment programs among adults.

If applied in the right manner, increased and targeted reliance upon alternatives across the criminal justice system may be one way that mass incarceration is reduced in the future. This alternative conception of criminal justice may take time to implement, especially because this research has demonstrated that investment in institutional structures that provide alternatives is uncommon compared with investment in prison facilities. A long-term cultural shift within the criminal justice system is required to achieve these aims, particularly because the institutional frameworks erected during our punitive phase of criminal justice has generated its own path-dependent momentum, which may continue to increase punitive justice approaches even while most of society recognizes that we need to change them. Society may not observe improvements to the functioning and cost reduction of our prison system in the short-term, possibly not until

the rehabilitation of inmates is increased and accepted as a legitimate goal in a more widespread manner in the United States, changing policy and institutional frameworks as a result.

Some states have recently enacted reforms that have taken a more favorable position towards the incorporation of alternatives in treating offenders. Characterized by one author as a “philosophical change,” alternative sentencing reforms undertaken in Georgia in 2012 saved the State approximately twenty million dollars by 2014: “the changes included reduced sentences for relatively minor crimes such as writing bad checks and burglary, and the state is diverting addicts to community supervision and treatment through so-called accountability courts instead of sending them through the normal criminal system and on to prison” (pgs. 1-2).^[31] A 2014 measure in California reclassified some felony offenses as misdemeanors, allowing thousands of inmates to receive retroactively reduced sentences, and diverted saved funds towards “investments in mental health and substance abuse treatment, programs to reduce school truancy and prevent dropouts, and support for victim services” (pg. 25).^[11] The Sentencing Project also explains how reforms used in Berks County, PA were able to “reduce the number of youth in secure detention – most of whom were youth of color – by 67% between 2007 and 2012 in part by increasing reliance on alternatives. These included non-secure shelters for youth who cannot safely return home but did not require locked detention, evening reporting centers, electronic monitoring, and expanded use of evidence-based treatment programs” (pg. 23).^[11] Illinois was able to lower its use of detention by forty-four percent as of 2007 through a pilot program that involved the use of alternatives, such as “Aggression Replacement Training, Functional Family Therapy, a community

restorative board, teen court, and substance abuse treatment. For every \$1 spent on the programs, \$3.55 in incarceration costs were avoided” (pg. 23).^[11] In 2013, Governor Jindal of Louisiana signed a measure into law that allows courts to sentence some non-violent offenders to treatment in lieu of incarceration, a step that directs the attention of courts to alternatives (pg. 40).^[32] Jindal remarked,

Studies have shown that substance abuse treatment instead of incarceration is a more effective treatment for nonviolent, non-sex, non-habitual drug offenders. By enacting these common-sense sentencing reforms, we can provide these types of offenders with the help they need and lower recidivism rates that are costly to the state and our communities (pg. 40).^[32]

Although seemingly insignificant because it only affected an estimated 500 offenders, this move created a change in discourse that embraces alternatives within future criminal justice policy in one of the most punitive states in the nation, one with the highest incarceration rate in the nation at 867 per 100,000 individuals in 2010,^[33] an even higher rate than the United States average of approximately 700 per 100,000. These reforms are evidence of a transition to a new attitude towards criminal justice, which contrasts sharply with the punitive mentality of the 1970s through the 1990s, an era that emphasized “broken-window” policing and the maintenance of social order through heightened punishment of low-level offenses.

We may continue to experience relatively high rates of costly incarceration if we do not employ alternatives to our current practices. In contrast to policies that singularly favor punitive methods, Scott and Steinberg (2008) maintain, “Sanctions that effectively invest in the human capital of young offenders and facilitate their transition to adulthood are likely to promote the interests of society as well as those of young offenders—as long as they do not unduly compromise public safety” (pg. 25).^[6] Solutions to the inequalities produced by mass incarceration are a balancing act. If opportunities for low-income

offenders are not more readily available and sanctioned by policy, the same incentive structures remain in place for low-income individuals to rely upon illicit means of generating income to gain even a small degree of financial stability. By tailoring sentencing outcomes to individuals, and by even recognizing in the first place that society has a stake in the outcomes associated with offenders, we can reduce our institutional contributions to the overall costs of crime by not renewing its breeding ground in prisons across the country, and by reducing the likelihood that offenders will experience trauma during their time in prison that they will be unable to handle once they leave.

Admissions and Net-Widening

A primary criticism of non-prison alternatives to prison is that they may actually contribute to a “wider net” being cast by the criminal justice system that provides offenders with many additional avenues towards being placed in prison. Beckett and Murakawa (2012) critique the use of alternatives because they have the tendency to advance the supervisory power of the government: “the shadow carceral state has many entryways and few exits, as ostensible ‘alternatives’ to punishment simply double back to the carceral state. The politics surrounding these penal developments are complex and include high-profile initiatives such as ‘three strikes’ legislation as well as more subtle politics and covert institutional processes that drive innovation and adaptation” (pgs. 222-223).^[34] **Figure 4** in the Appendix displays the basic trajectories inmates take through the criminal justice system. The red boxes indicate pathways that return inmates to the “Arrest” stage at the beginning for consideration of additional punishments. The abundance of these feedback loops supports Beckett and Murakawa’s critique that

alternatives may produce additional ways for already supervised individuals to be held accountable for less significant infractions.

It is not just incarceration that ensnares people within the criminal justice system. In 2013, approximately 3.9 million offenders were supervised within probation programs in the United States, which are also intended to punish instead of treat offenders.^[35] Probation also exacerbates many low-income individuals' ability to attain financial stability,^[36] and leads to higher rates of offenders being sent to prison because of relatively insignificant technical violations to their probation or parole agreement. This disciplinary approaches of probation and parole may often do little more than harass offenders by making them complete numerous steps or face a revocation of their status as relatively free individuals.^[36] According to Clear and Austin (2009), "at least one-third of prison admissions come by this route. It is notable that these prisoners are people who have not been convicted of new crimes but are returned to prison as a consequence of rules violations" (pg. 317).^[22] These authors suggest that this is an important policy mechanism to consider for policy reform: "If technical revocations are eliminated and graduated strategies put into place, the rate of parolees returning to prison will be cut substantially, perhaps as much as two-thirds. And because there is no evidence that technical revocations prevent crime, a policy that eliminates them might be pursued with minimal public safety implications" (pg. 318).^[22] These concerns over technical revocations could potentially apply to the state-sanctioned use of all types of alternatives, and have prompted Demlietner (2005) to suggest that relying upon a range of punitive mechanisms could be used in response to technical violations of parole and probation. She writes, "only intermediate sanctions whose completion can be effectively

implemented and monitored should be imposed. Courts must be provided with a host of available responses in the case of offender noncompliance with the intermediate sanction, ranging from immediate incarceration for the remaining sentence to a warning” (pg. 349).^[28] These observations imply that the ways that we monitor and sanction violations to sentencing orders that incorporate community programming and non-prison supervision have the potential to inadvertently increase incarceration rates, especially when the default punishment for a technical violation is prison time. Creative ways to prevent the net-widening effect of non-prison disciplinary strategies could involve extensions of the alternative sentence length, fines, or steeper supervisory components, which may not be ideal, but may be better options than relying upon incarceration in all cases. An important question for future research is whether non-punitive treatment approaches can be integrated with intermediate sanctions such as probation or parole, given that alternatives are not as cost efficient when compared to these types of sanctions versus incarceration. In other words, it is harder to make a cost-based argument for incorporating alternatives into intermediate sanctions, because probation and parole are already far less expensive than incarceration. Nonetheless, a rehabilitative approach is more likely to reduce the need for additional sanctions in the future.

Racial Disparities in Sentencing

The justice system has generally relied upon alternatives to sentence white, non-minority offenders to a much greater extent than they are applied among minority offender populations. The Sentencing Project states, “Diversion programs disproportionately bar people of color from alternatives to incarceration because they frequently disqualify

people with past convictions” (pg. 15).^[11] Disproportionate minority access to alternatives to incarceration is partly due to a lack of funding: “Due to limitations in publicly funded treatment options, there are fewer sentencing alternatives available to low-income defendants, who cannot afford to pay for treatment programs as an alternative to confinement ... Community supervision and reentry programs are underfunded, with too many parole and probation systems offering supervision with little support.” (pg. 17).^[11] Having few opportunities to advance in society is likely to incentivize criminal behavior – given an absence of viable opportunities to achieve social and financial advancement, criminal behavior may be concentrated within populations that experience higher rates of poverty and racial segregation, as mediated by institutionalized racial bias and discrimination in the job and housing markets. The criminal justice system also contributes substantially to this disparity. For example, “Sentencing laws that are designed to more harshly punish certain classes of offenses, or to carve out certain groups from harsh penalties, also often have a disparate impact on people of color. This occurs because of how sentencing laws interact with broader racial differences in our society and within the criminal justice system” (pg.15).^[11] The Sentencing Project has been particularly vocal about these disparities, suggesting,

Disadvantage accumulating at each step of the [criminal justice] process contributes to blacks and Latinos comprising 56% of the incarcerated population. The roots of this disparity precede criminal justice contact: conditions of socioeconomic inequality contribute to higher rates of some violent crime and property crimes among people of color ... Prosecutorial policies, such as plea bargaining guidelines that disadvantage blacks and Latinos compound these disparities, as do sentencing laws that dictate harsher punishments for crimes for which people of color are disproportionately arrested (pg. 3).^[11]

This observation suggests that certain crimes may not be identified as occurring within all social groups because police disproportionately patrol racially concentrated low-income neighborhoods where not all groups are equally represented. Policing probably plays a

large part in constructing racial disparity within the criminal justice system.

Other types of racially disparate behavior also work to exacerbate the effects of our criminal justice system upon low-income minority communities. For example,

A study in Washington State found that in narrative reports used for sentencing, juvenile probation officers attributed the problems of white youth to their social environments but those of black youth to their attitudes and personalities. Defense attorneys may exhibit racial bias in how they triage their heavy caseloads ... Studies of mock jurors have even shown that people exhibited skin-color bias in how they evaluated evidence: they were more likely to view ambiguous evidence as indication of guilt for darker skinned suspects than for those who were lighter skinned (pg. 16).^[11]

These observations present a view of criminal justice in the United States that is characterized by a profusion of mechanisms that systematically disadvantage low-income individuals. The Sentencing Project also suggests, “the least racial disparity exists for the most serious offences and that the most exists for the least serious offences (for which arrest rates are also poor proxies of criminal involvement). This is because criminal justice practitioners can exercise greater discretion with less serious crimes” (pg. 14).^[11]

The sentencing frameworks used by judges and probation officers are necessary to consider when analyzing offenders who commit low-severity crimes, which represent an important population of individuals who are cycling and recycling through the criminal justice system, and who can also be targeted with alternative programming.

The original intention behind this behind this system of disproportionately distributed costs of the justice system may be to produce social order within low-income populations by incapacitating criminals, yet this has been largely unsuccessful at deterring crime, as Mauer (2001) suggests, and tended to generate many unanticipated consequences. These policies have criminalized specific demographic groups, leading to their depressed mobility, increased disruption of communities, and further incentives to commit crime as indexed by recidivism, low success rates of reentry, and the real-life

pressures of being confronted with few available economic opportunities.

By using incarceration as a default mechanism of discipline, we have generally failed to identify ways that we can make our criminal justice system both more cost-efficient by cutting down on crime that stems from the experience of being in prison, as well as more equitable by addressing the real-world problems that those who are prone to commit crime face. These problems may include having few role-models, little financial support, low nutrition, a lack of awareness of the connection of the value of education to becoming financially stable at the time it was obtainable or observing that systemic discrimination prevents its attainability, becoming chemically-dependent, or becoming involved in gangs as a substitute for the social structure family-life. These are symptoms that have been exacerbated by historical and current legacies of discrimination, segregation, white flight, workplace and housing biases, intergenerational poverty and trauma, and a wide variety of policy mechanisms that have resulted in unequal distributions of resources and power to low-income minority communities.

If we intend alternatives to be used as a widespread method to help ameliorate the problems associated with the criminal justice system, we must evaluate whether they are being applied towards the needs of minorities and majorities alike. Alternatives may be useful for the purpose of lowering the costs of incarceration overall, but unless they are applied to help all members of society, traditional problems involving implicit racial bias that plague the United States criminal justice system may affect the equal implementation of alternatives, as well as the potential and capacity for alternatives to serve as a socially-efficient solution to incarceration overall.

Conclusion – Implications for Public Policy

This research has found that alternatives to incarceration are underutilized in the United States as disciplinary responses to criminal offenders. Alternatives tend to be less costly than incarceration as well as more effective at preventing crime, facilitating reentry, and lowering recidivism. Policy recommendations stemming from this research include building assessments of the potential to apply alternatives to incarceration into sentencing guidelines and into the intermediate sanctions frameworks of probation and parole, and giving judges enough discretion to be able to assess whether an offender has mental health or substance abuse problems, and facilitating their ability to tailor sentences accordingly with the intention of treating, not punishing these behaviors. A trauma-sensitive approach may be required to accomplish this. Criminal justice policy should also consider ways to address system-wide root causes of crime to prevent mass incarceration, such as poverty and low literacy, and be critical when solutions with singular aims are presented, such as only providing inmates or former inmates support and resources if they are invested in job training and advancing from the perspective of financial success. Often, mental and substance abuse issues must be confronted among offenders before they are capable of workplace reintegration.

Observing that a combination of high costs and racial inequities characterizes the prison system in the United States may explain recent bi-partisan approaches towards criminal justice reform, costs being a favorite political issue on the right, and racial equality being important to the left. We may also perceive that these factors are interconnected. Consider that the high costs of our prison system have been tied to the enforced isolation of a large swath of society, one composed primarily of young African

American men, a traditionally disadvantaged and oppressed group. We should question whether it has been easier for the American public to construct and accept discourses that vilify offenders, and to likewise accept the high costs related to this treatment, particularly because that group has been composed of young African American men. Mainstream media and public discourse has constructed this group as a marginalized 'other,' a group whose daily struggles are removed from view from the average white American, leaving it vulnerable to being stigmatized.

Compared to producing an ideal form of criminal justice, it has been far easier to construct a simplified understanding of such a group, whose differences in culture, skin color, and economic position support the imaginary construction of an inhuman, inherently criminal class of people, and then to construct inhuman disciplinary responses based upon these projected fears. By removing these targeted, socially constructed individuals from society, by hiding them from public view, the prison system perpetuates its own convoluted, ineffective mechanism because either we as a society do not care what happens to this group, or we fail to recognize the toll it imposes because its effects are largely hidden from view. These observations are underscored by Alfred and Chlup's statement, "Those of us living outside of the walls of prison need as much education about the correctional system as those living within its confines" (pg. 248).^[12] The illusion that our prison system only affects those in prison should be dispelled. Through the act of producing normative judgments about the most marginalized members of society, whether inmates, minorities, or both, we implicitly construct ourselves as legitimate, socially acceptable, and ideal citizens.

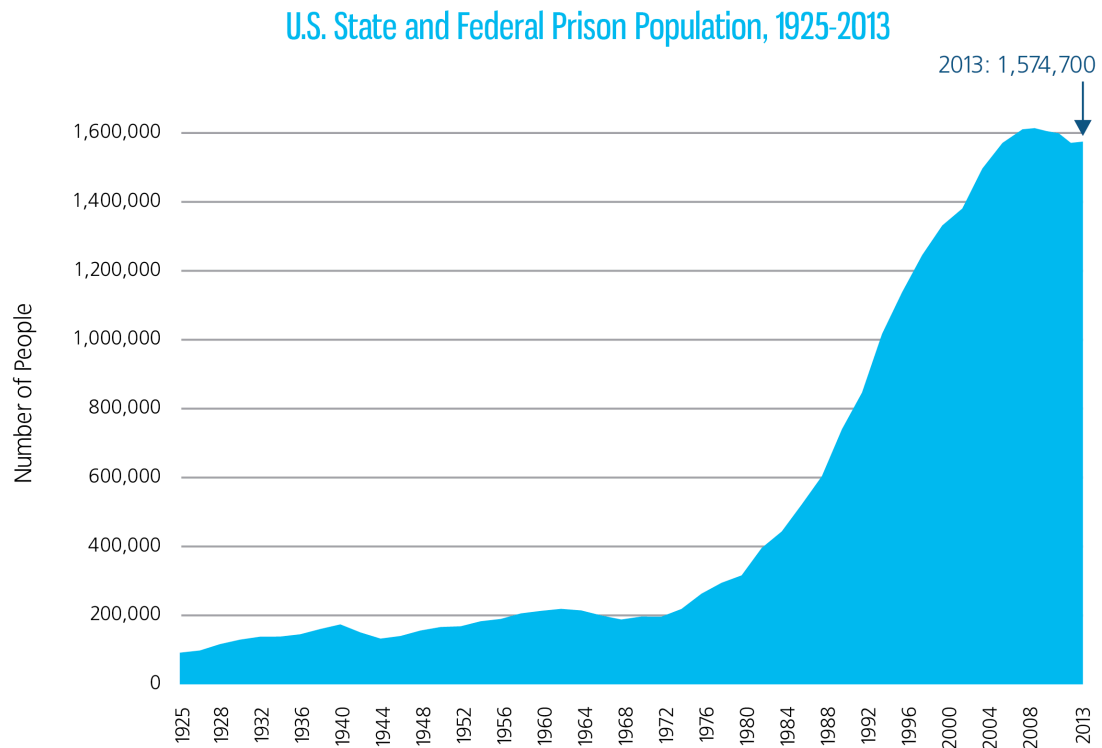
Given their potential to reduce costs, one might wonder why alternatives are not relied upon to a far greater extent in the United States. Analyses of political discourses suggest that a major reason for this may have to do with how offenders have been stigmatized as untreatable and unworthy of treatment other than punishment. The fact that most inmates are racial minorities may have enabled this punitive treatment to remain unquestioned for so long. Structural and implicit racial biases in the criminal justice system have contributed to a lack of investment in offenders due to the low political influence minorities have to shape policy options. Public officials have been afraid to be considered “soft on crime” which has seriously limited the political feasibility of alternatives and their exploration as an option. This cultural aspect of how our electoral politics interacts with our criminal justice system potentially lowers its ability to achieve the highest public good.

Public policy evolves in the United States within the intersection of various institutions and stakeholders with different characters, intentions, and methodologies. As Kingdon implies, these may be aligning in ways that favor the substantial incorporation of alternatives within future sentencing reform. The state of the prison system yields opportunities for bi-partisanship to occur because it generates cost efficiency problems that the political Right tends identify as important, as well as social justice and equality problems that preoccupy the Left. We may observe heightened use of alternatives in the near future, and that this change may improve the functioning of criminal justice in the United States. However, racial discrimination and disparity remains to be eliminated in their application, and it is unclear as to what the best ways of addressing this problem are. Once again, we must return to the question posed by Pfaff (2011): for whom is policy

created to serve? Ultimately, these concerns should cause us to reflect upon a fundamental problem for public policy, which is that policy generated by one social group and levied towards another may never exist without significant methodological and moral complications.

Appendix

Figure 1.^[3]



Source: Bureau of Justice Statistics Prisoners Series.

Figure 2.^[37] Incarceration by Offenses in the United States

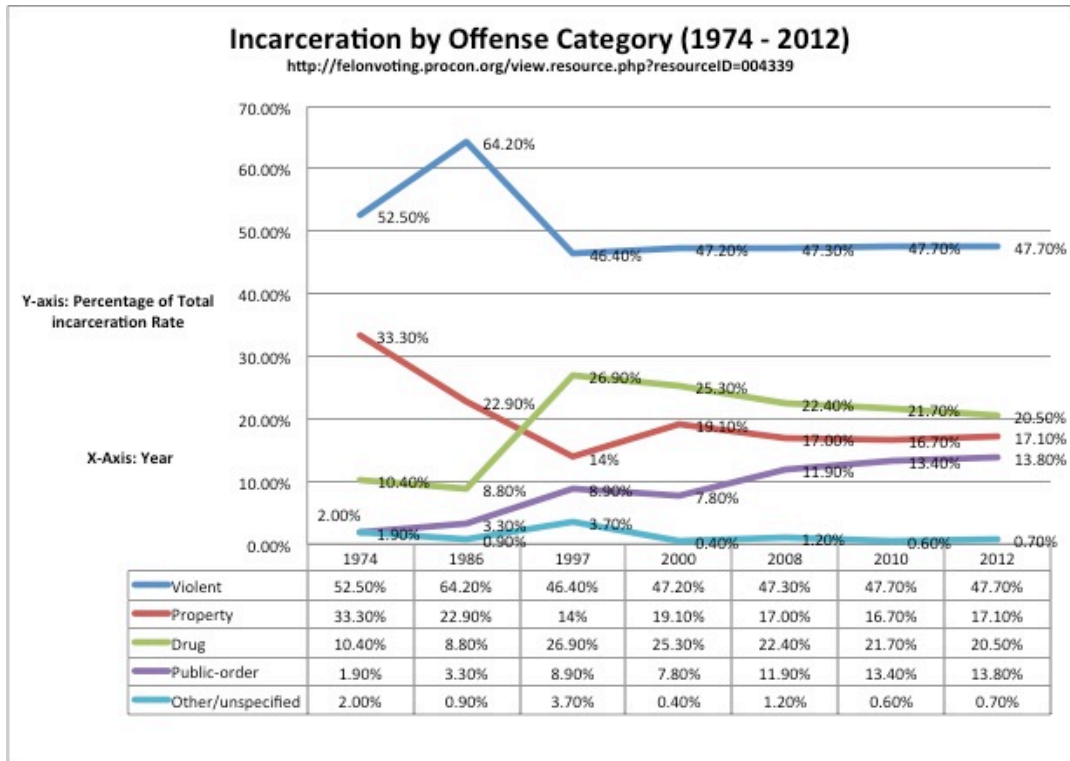


Figure 3. Process Model: The Institutional Landscape

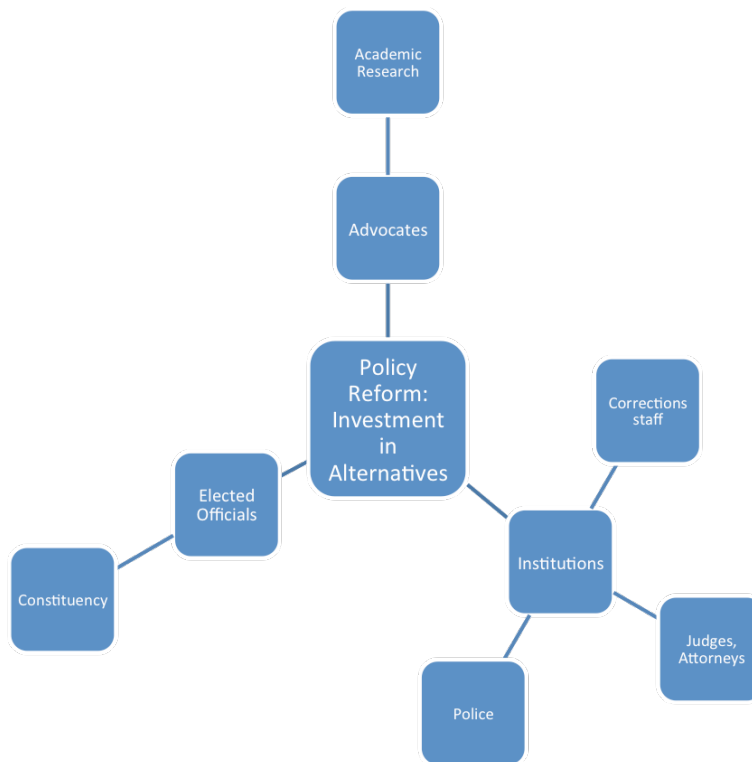
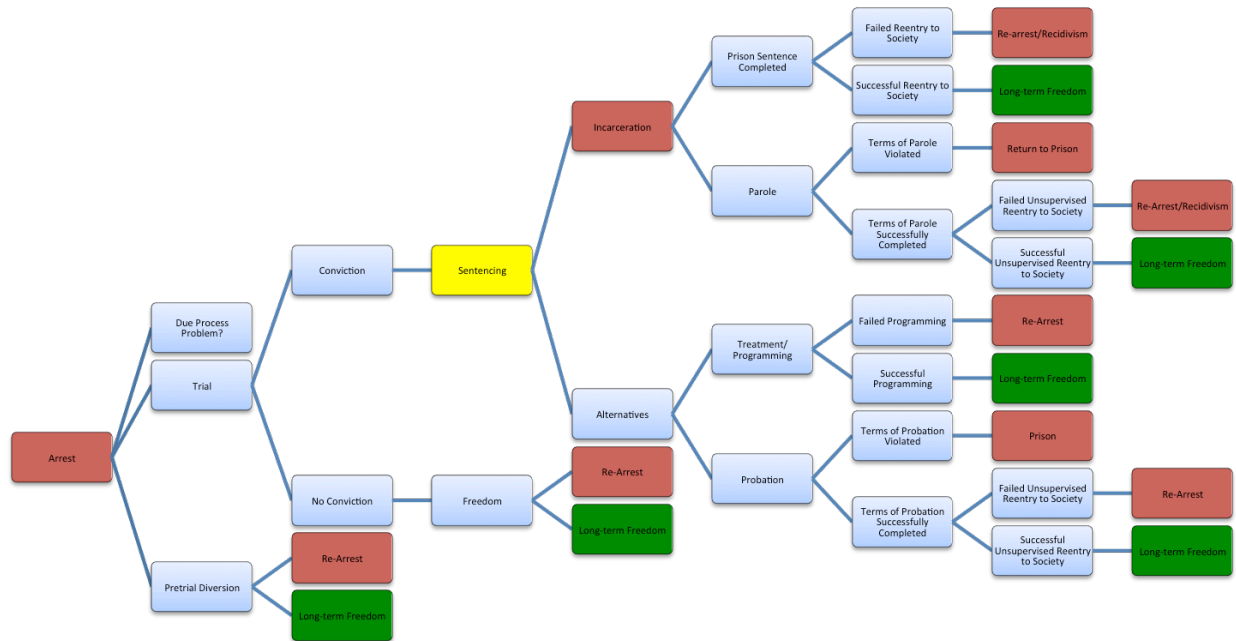


Figure 4. Process Model: Offender Pathways Through the Criminal Justice System



Resources

- [1] F. W. Nietzsche and W. A. Kaufmann, *Basic writings of Nietzsche*. Modern Library. 2000.
- [2] J. Benco, “The Radical Humaneness of Norway’s Halden Prison: The goal of the Norwegian prison system is to get inmates out of it,” *The New York Times Magazine*, pp. 1–17, 2015.
- [3] “The Sentencing Project - Incarceration,” *The Sentencing Project*, 2015. [Online]. Available: <http://www.sentencingproject.org/template/page.cfm?id=107>.
- [4] L. Neyfakh, “Why are so many Americans in prison?,” The Slate Group. 2015. [Online]. Available: http://www.slate.com/articles/news_and_politics/crime/2015/02/mass_incarceration_a_provocative_new_theory_for_why_so_many_americans_are.html.
- [5] M. F. Caldwell, “Are Violent Delinquents Worth Treating? A Cost-Benefit Analysis,” *Journal of Research in Crime and Delinquency*, vol. 43. pp. 148–168, 2006.
- [6] E. S. Scott and L. Steinberg, “Adolescent development and the regulation of youth crime,” *Future Child.*, vol. 18, pp. 15–33, 2008.
- [7] J. Simon, “Ending Mass Incarceration is a Moral Imperative Ending Mass Incarceration is a Moral Imperative,” vol. 26, no. 4, pp. 271–275, 2015.
- [8] T. Hughes and D. J. Wilson, “Reentry Trends in the United States,” *Bureau of Justice Statistics*, 2015. [Online]. Available: <http://www.bjs.gov/content/reentry/reentry.cfm>.
- [9] A. A. Robertson, P. W. Grimes, and K. E. Rogers, “A Short-Run Cost-Benefit Analysis of Community-Based Interventions for Juvenile Offenders,” *Crime & Delinquency*, vol. 47. pp. 265–284, 2001.
- [10] “POVERTY AND THE CRIMINAL JUSTICE SYSTEM,” *Defending Justice: An Activist Resource Kit*, 2005. [Online]. Available: <http://www.publiceye.org/defendingjustice/pdfs/factsheets/11-Fact Sheet - Poverty.pdf>.
- [11] N. Ghandnoosh, “Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System,” The Sentencing Project. 2015. [Online]. Available: http://sentencingproject.org/doc/publications/rd_Black_Lives_Matter.pdf.
- [12] M. V. Alfred and D. T. Chlup, “Neoliberalism, Illiteracy, and Poverty: Framing the Rise in Black Women’s Incarceration,” *West. J. Black Stud.*, vol. 33, pp. 240–249, 2009.
- [13] M. Mauer, “The causes and consequences of prison growth in the United States,” *Punishm. Soc.*, vol. 3(1), no. 1462–4745(200101), pp. 9–20, 2001.
- [14] F. E. Zimring, “Imprisonment rates and the new politics of criminal punishment,” *Punishm. Soc.*, vol. 3(1), no. 1462–4745(200101), pp. 161–166, 2001.
- [15] Y. Zhang, C. D. Maxwell, and M. S. Vaughn, “The impact of state sentencing policies on the U.S. prison population,” *J. Crim. Justice*, vol. 37, no. 2, pp. 190–199, 2009.

- [16] J. Sorensen and D. Stemen, "The Effect of State Sentencing Policies on Incarceration Rates," *Crime Delinq.*, vol. 48, no. 3, pp. 456–475, 2002.
- [17] J. F. Pfaff, "The myths and realities of correctional severity: Evidence from the national corrections reporting program on sentencing practices," *Am. Law Econ. Rev.*, vol. 13, pp. 491–531, 2011.
- [18] J. F. Pfaff, "The Micro and Macro Causes of Prison Growth," *Ga. State Univ. Law Rev.*, vol. 28, pp. 1 – 36, 2012.
- [19] S. Raphael, "Explaining the rise in U.S. incarceration rates," *Criminol. Public Policy*, vol. 8, no. 1, pp. 87–95, 2009.
- [20] S. D. Bushway, "So policy makers drive incarceration -- Now what?," *Criminol. Public Policy*, vol. 10, no. 2, pp. 327–333, 2011.
- [21] M. Hamilton, "Prison-By-Default: Challenging the Federal Sentencing Policy's Presumption of Incarceration," *Houst. Law Rev.*, vol. 51, no. 5, pp. 1271–1334, 2014.
- [22] T. R. Clear and J. Austin, "Reducing Mass Incarceration: Implications for the Iron Law of Prison Populations," *Harvard Law Policy Rev.*, vol. 3, pp. 307–324, 2009.
- [23] S. M. Fass and C.-R. Pi, "Getting Tough on Juvenile Crime: An Analysis of Costs and Benefits," *Journal of Research in Crime and Delinquency*, vol. 39, pp. 363–399, 2002.
- [24] G. E. Lynch, "Ending Mass Incarceration: Some Observations and Responses to Professor Tonry," *Am. Soc. Criminol.*, vol. 13, no. 4, pp. 561–566, 2014.
- [25] W. J. Wilson, *The Truly Disadvantaged: The Inner City, The Underclass, and Public Policy*. Chicago and London: The University of Chicago Press, 1990.
- [26] J. W. Kingdon, *Agendas, alternatives, and public policies (2nd Edition)*, Pearson. vol. 2. 1995.
- [27] J. Travis, "Assessing the State of Mass Incarceration," *Am. Soc. Criminol.*, vol. 13, no. 4, pp. 567–577, 2014.
- [28] N. Demleitner, "Smart Public Policy: Replacing Imprisonment with Targeted Nonprison Sentences and Collateral Sanctions," *Stanford Law Rev.*, vol. 58, no. 1, p. 339, 2005.
- [29] D. Goldstein, "No Country for Young Men: Junior Smith was a troubled kid who needed help. Instead, West Virginia sent him to jail.," *The Marshall Project*, 2014. [Online]. Available: <https://www.themarshallproject.org/2014/10/06/no-country-for-young-men>.
- [30] R. K. Warren, "Evidence-Based Practices and State Sentencing Policy : Ten Policy Initiatives to Reduce Recidivism," *Indiana Law J.*, vol. 82, no. 5, 2007.
- [31] E. Sturgis, "Georgia sentencing reforms pays off on budget, Deal says," *Politifact Georgia*, 2014. [Online]. Available: [file://localhost/Available/http://www.politifact.com/georgia/statements:2014:mar:19:nathan-deal:georgia-sentencing-reforms-pays-budget-deal-says:](http://localhost/Available/http://www.politifact.com/georgia/statements:2014:mar:19:nathan-deal:georgia-sentencing-reforms-pays-budget-deal-says:).
- [32] S. Glazer, "CQR Sentencing Reform," *CQ Res.*, vol. 24, no. 2, pp. 25–48, 2014. [Online]. Available: <http://nmsc.unm.edu/cq-researcher-sentencing-reform.pdf>.

- [33] “Prison Populations and State Incarceration Rate Data,” *Governing: The States and Localities*, 2010. [Online]. Available: <http://www.governing.com/gov-data/state-prison-population-incarceration-rates.html>.
- [34] K. Beckett and N. Murakawa, “Mapping the shadow carceral state: Toward an institutionally capacious approach to punishment,” *Theor. Criminol.*, vol. 16, no. 2, pp. 221–244, 2012.
- [35] “U.S. CORRECTIONAL POPULATION DECLINED BY LESS THAN 1 PERCENT FOR THE SECOND CONSECUTIVE YEAR,” *Bureau of Justice Statistics*, 2014. [Online]. Available: <http://www.bjs.gov/content/pub/press/cpus13pr.cfm>.
- [36] “Profiting from Probation: America’s ‘Offender-Funded’ Probation Industry,” Human Rights Watch. 2014. [Online]. Available: http://www.hrw.org/sites/default/files/reports/us0214_ForUpload_0.pdf.
- [37] ProCon.org, “Incarcerated Felon Population by Type of Crime Committed, 1974-2012 - Felon Voting - ProCon,” 2015. [Online]. Available: <http://felonvoting.procon.org/view.resource.php?resourceID=004339>.